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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/679,183	10/04/2000	Raphael Meyers	4984-7	6617

7590 06/08/2005
Cohen Pontani Lieberman & Pavane
551 Fifth Avenue
Suite 1210
New York, NY 10176

EXAMINER

KYLE, CHARLES R

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/679,183

Applicant(s)

MEYERS, RAPHAEL

Examiner

Charles Kyle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29, 34, 35 and 41-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29, 34, 35 and 41-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Rejection of Claims 1-29, 34-35 and 41-57 under 35 U.S.C. 112, second paragraph, are withdrawn based on Applicant's amendment.

Rejections of Claims 53-57 are withdrawn based on Applicant's comment at page 12 of the Response clarifying the nature of the invention as an apparatus.

Claim Rejections - 35 USC § 101

The rejections under 35 U.S.C. 101 are withdrawn based on Applicant's amendment.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-29, 34, 35 and 41-57, are rejected under 35 U.S.C. 103(a) as being unpatentable over the *Nymeyer* patent (US 3,581,072) in view of US 6,230,146 *Alaia et al.*

The *Nymeyer* patent discloses a method for conducting an auction comprising the steps of:

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Offering at least one item for sale for a predetermined period of time, receiving a first bid for the item from a first bidder, according a first value to the first bidder as a first function of the timing and the worth of the first bid, receiving at least one succeeding bid from another bidder, according a second value to the other bidder as a second function of timing and worth of the second bid, accumulating values accorded the first bidder for each bid, accumulating values accorded the other bidder for each bid, comparing the accumulated values of the first bidder and the other bidder, and identifying an auction leader by comparing the accumulated values of the first bidder with those of the other bidders (col. 6, lines 28-64) (claims 1, 10, 53-57);

Nymeyer further discloses closing an auction after a predetermined period of time at Col. 12, lines 67-76. *Nymeyer* does not specifically disclose the newly claimed limitation of bidding after a predetermined bidding period of time of an auction. *Alaia* discloses this limitation at Col. 13, line 26 to Col. 15, line 15. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Nymeyer* with the auction overtime feature of *Alaia* because this would allow for receipt of better bids based on appropriate triggers, which would produce improved auction results for the person supervising the auction. See *Alaia* at Col. 13, lines 53-67.

The first and second functions are substantially identical (col. 5, lines 35-74) (claim 2) or are different (claim 3);

The first function accords a greater value to the earliest bid of a group of identical bids (col. 2, lines 10-13) (claim 4);

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The comparing of the worth of the first bid with the worth of the at least one successive bid is performed at predetermined times (col. 2, lines 4-28) (claim 12);

The comparison of values is made on a continuous basis (col. 6, lines 39-50) (claim 11) or at a predetermined time wherein the predetermined times are incremental time periods, days, hours, minutes, seconds (Examiner takes official notice that comparisons can be made at predetermined times) (claims 13-17);

The accumulating of the values occurs each time the worth of a bid exceeds a worth of all preceding bids (col. 6, lines 45-40) (claim 18);

The worth of a successive bid is required to be greater than a worth of a preceding bid by a minimum increments (per share) (claim 19);

Establishing a floor value depends on the amount by which the first bid and the successive bids exceed the floor value (col. 6, lines 51-63) (claim 20);

At least one of the first function and the second function accords a value based upon at least one predetermined timing consideration (col. 2, lines 4-28) (claim 21);

The at least one predetermined timing consideration is the time of day (col. 2, lines 4-28) (claim 22);

The at least one predetermined timing consideration is approximately to the end of the first predetermined period of time (col. 2, lines 4-28) (claim 23);

The at least one predetermined timing consideration is the duration of the period any individual bid has remained the bid having the greatest worth (col. 2, lines 4-28) (claim 24);

The at least one predetermined timing consideration is having the bid with the greatest worth at predetermined time milestones (col. 2, lines 4-28) (claim 25);

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At least one of the first and second functions accords a value based upon at least on predetermined worth criterion (value = the order they are placed in auction, with worth criterion being time and amount)(claims 26-29);

Continuing the auction after the first predetermined period of time for a second predetermined period of time, limiting participation in the auction during the second predetermined period of time to bidders based on a fifth function of the total accumulated values of bids for each of the bidders accorded during the first predetermined period of time (col. 2, lines 4-28) (claim 34);

Bids placed during the second period of time are weighted as a sixth function of accumulated values of bids placed during the first predetermined period of time (col. 2, lines 4-28) (claim 35);

At least two substantially identical bids are offered for sale, wherein bidders are permitted to bid on more than one of the items, each bidder must specify how many of the identical items are being bid upon and the amount of the bid, and the values are accumulated for each bid on each item (col. 6, lines 7-28)(claims 45-47);

The minimum increment is fixed (col. 7, lines 41-63) (claim 48);

The minimum increment is an eighth function of an accumulation of values accorded to a bidder (col. 7, lines 41-63) (claim 49);

The first and second function is accumulated for all bids placed by a bidder up to a specific time (order period, col. 12, lines 67-77) (claims 50-52).

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Response to Arguments

Applicant's arguments with respect to application of prior art to claims 1-29, 34-35 and 41-57 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Kyle whose telephone number is (571) 272-6746. The examiner can normally be reached on 6:30 to 3:00.

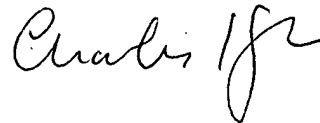
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

crk
June 1, 2005

Examiner Charles Kyle

A handwritten signature in cursive script, appearing to read "Charles Kyle", written in black ink.